

IMPORTANT

COPYRIGHT DECISION.

GAMBIER BOLTON

VERSUS

CECIL ALDIN AND OTHERS.

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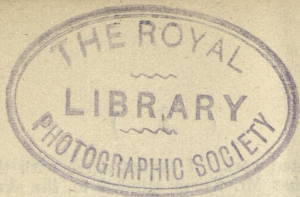
COPYRIGHT DECISION

GAMBIER BOLTON

ERIC ALBIN AND OTHERS

Printed and Published by the British Book Co. Ltd.

1911



IMPORTANT COPYRIGHT DECISION.

GAMBIER BOLTON [CECIL *versus*] ALDIN AND OTHERS.

In the High Courts of Justice, Queen's Bench Division,

BEFORE

MR. JUSTICE GRANTHAM.

(Without a Jury.)

MR. GAMBIER BOLTON, the well-known Animal-photographer, and lecturer on Natural History, sued Mr. Cecil Aldin, the artist, for damages, penalties, and an injunction for copying one of his animal studies in the *Sketch* last January, and also asked for an injunction against Messrs. Ingram Brothers, the proprietors of the paper in question.

Mr. Willes Chitty was for the plaintiff, and Mr. Kemp, Q.C., and Mr. Willis Bund for the defendant, Aldin. Mr. Foreman watched the case on behalf of Messrs. Ingram Bros.

It was proved in evidence that defendant had used Mr. Gambier Bolton's photographs on three occasions within a few weeks of each other, and we give herewith the verdict of Mr. Justice Grantham :—

"There can be no doubt that in this case the plaintiff is entitled to an injunction, and is also entitled to penalties and damages.

"It is first of all alleged, on the authority of the case of Hanfstaengel *versus* Baines & Co., that this does not come within the Copyright Act because it is not exactly of the same size as it was photographed by Mr. Bolton, and does not represent the same idea that would pass through the mind of a person looking at the *Sketch* as it would to the mind of a person if he were looking at

this particular copyrighted work. I cannot agree with that argument at all. Of course, in the case that Mr. Kemp alluded to, the sketch was an entirely different one [Mr. Justice Grantham then went thoroughly into the 'Living Pictures' case]. In this case the allegation is that the picture *itself* has been copied, and that it is nothing but a reproduction of the picture or photograph copyrighted by Mr. Bolton. I can have no doubt whatever that the picture in the *Sketch* is a pure copy, and a very good copy, of the plaintiff's photograph; and, if that is so, in my judgment it is a clear infringement of his rights.

"It is very important that the public should know that artists who prepare these drawings for the illustrated papers, which are now so much in vogue and are sold so very largely, have no right to take pictures which have been copyrighted by the authors and reproduce them as their own; because the world, or the 50,000 or 20,000 people, or whatever the number may be who buy these papers, and a great many thousand more people who would see the papers bought by others, would assume that this picture of the tiger was an original sketch or was by Mr. Cecil Aldin; whereas, as a matter of fact, it was not by him at all, but it was simply done in his room, copying from something which had been done by Mr. Bolton. Under these circumstances, I am clearly of opinion that there is an infringement of the copyright.

"The next defence is, that the defendant was authorised and induced to do it by a circular issued by Mr. Bolton, containing a list of various photographs which he had taken, or rather containing a list of *some* of those that he had taken. It so happens that this one does not appear there at all, therefore that argument falls to the ground. It does not appear there at all; but, taking it as though it referred to *all* these photographs, I cannot for a moment assume, because it says 'invaluable to artists,' that therefore artists are to pay a shilling for them, and then copy them and bring them out as their own, because that is exactly what the defendant did in this case.

"Therefore, under these circumstances, my judgment must be for the plaintiff on both grounds, and on all the grounds alleged by the plaintiff, and against the defendant upon the grounds raised by his learned Counsel.

"Under these circumstances the question is, as to what damages should be given. With regard to the damages in this particular case, it certainly seems clear that the sale of this particular photograph has been stopped. There is distinct evidence to that effect. The price of it is a shilling, and the price of larger copies more. What damage has been sustained it is, of course, very difficult to assess, but some particular sum must be assumed, partly as compensation to the plaintiff, and, no doubt, to show what view the Court takes of plagiarisms of this nature, and to prevent its being done in future. The penalties are 10% for each copy. The defendant has only made one copy, and it is rather difficult to say exactly to what extent he might be liable where a copy is reproduced in great numbers with his name attached to it; but I think justice will be done in this particular case if I give judgment for the plaintiff for the sum of 10% penalty, and 40% for damages."

Mr. Kemp, Q.C.: Forty pounds, my Lord!

Mr. Justice Grantham : Yes.

Mr. Willes Chitty : Of course, I shall contend, if necessary, that the defendant is liable for all the copies produced in the *Sketch*, because the words of the Act are 'or procure to be sold.'

Mr. Justice Grantham : Yes.

Mr. Willes Chitty : I ask for judgment against the *Illustrated London News*, or rather for an injunction.

Mr. Justice Grantham : An injunction only ?

Mr. Willes Chitty : With costs up to a certain date as agreed. I also ask against my learned friend's (Mr. Kemp's) client, for an injunction.

Mr. Justice Grantham : I understand the *Illustrated London News* have arranged with you.

Mr. Willes Chitty : Yes, my Lord. I ask for an injunction against the defendant, Mr. Aldin.

Mr. Justice Grantham : Yes.

Mr. Kemp : Will your Lordship give us a stay for seven days ?

Mr. Justice Grantham : I confess I do not see why I should. I do not think so.

Mr. Kemp : No stay, my Lord ?

Mr. Justice Grantham : No.

Mr. Willes Chitty : I ask your Lordship for costs.

Mr. Justice Grantham : Yes.

Much amusement was caused by the way in which, on one or two occasions, the plaintiff, whilst in the witness box, scored off Mr. Kemp, Q.C., defendant's counsel. On handing to the Judge a copy of his original print of the photograph in dispute, Counsel rose to his feet and loudly protested against the print being admitted as evidence, as it was not a photograph at all, but an engraving, and on the witness asking Counsel if he was prepared to swear to this, and receiving no reply, he informed the Court that it was only a *bromide print*, and Counsel sat down disappointed.

Shortly after this incident, Counsel held up one of Mr. Gambier Bolton's studies, and asked if this was one of his photographs of a tiger, to which came the ready response that he was not in the witness box for the purpose of giving Counsel a lesson in Natural History without a fee, but that he would like to point out to the Court that there was a considerable difference between lions and tigers, and that the print in question was a study of a *lion* !

Plaintiff, admitting that he was pleased to think of artists using his studies as references, was asked by Counsel where, then, he drew the line, but he subsided amidst considerable laughter when plaintiff replied

that photographic artists did not draw lines, but left that to "mechanics in art" like the defendant.

Later on, whilst Counsel was doing his utmost to convince the Court that defendant's drawing was not made from the plaintiff's photograph, he was met with the crushing rejoinder that the tiger in the disputed print had a cancerous growth in the mouth, which the photograph showed very plainly, and that the artist had actually traced this in, and had somewhat enlarged it, fancying that it was a part of the mouth itself.

After getting in a few forcible remarks as to the conduct of the defendant sitting in his comfortable studio at home and tracing photographs which had been obtained in all parts of the world at great risk, not only to health, but even on more than one occasion to life itself, the plaintiff left the witness box, and, after his witnesses had been examined, it was not surprising to hear defendant's Counsel say that he declined to call any witnesses on his side, although there were several present who had been in attendance for two days under subpoenas, and the case was brought to a successful issue by the verdict—described by many who were present as the "crushing" verdict of the Judge, who spoke with considerable warmth as to the grossness of the piracy.

This will prove a sharp lesson to the piratically inclined artist (well described as "a mechanic in art") and to the publishers who have so far supported them in different parts of the country, as it settles once and for all the important point, as Mr. Justice Grantham said, that any one taking a photograph has an absolutely complete control over it when copyrighted, that it is his own personal property, not to be used in any way without his consent, and that, in the event of any one stealing it, the Courts will support the copyright granted by the Government, and will award penalties and damages. Photographers in all parts of the world where the Act of 1862 is in force, and especially the Photographers' Copyright Union (which, however, took no part in the proceedings, as Mr. Gambier Bolton has only lately joined the Union), should be deeply grateful to him for having fought this action single-handed to the bitter end; and, although he was supported by such well-known animal-painters as Messrs. Nettleship and Wardle, and by such an authority and expert on photographic publication as Mr. Frank Bishop (Marion & Co.), it is to be regretted that not one of those who so constantly write and speak of photography as an art, although applied to, could be induced to support him in a case of such vital importance to all who practise photography. His well-earned victory has thus been won single-handed, and we heartily congratulate him on bringing the case to such a successful issue.

In addition to the above-mentioned case against Mr. Aldin, Mr. Gambier Bolton has obtained damages to the extent of 20*l.* from the proprietors of *Lloyd's Weekly Newspaper*, with an apology, for having used his photograph of an Australian crane with a wooden leg without his knowledge or consent. On payment of this amount he has stopped all further proceedings, and the following apology appeared in *Lloyd's Weekly Newspaper* last Sunday :—

“THE CRANE WITH A WOODEN LEG.—We regret to have published in our issue of April 14 a reproduction from Mr. Gambier Bolton's copyright photograph of *The Crane with a Wooden Leg*. Our attention having been called to the fact, we willingly acknowledge our error. Mr. Gambier Bolton's animal studies are so widely known that this acknowledgment is due to him for what is, without doubt, a valuable property.”

With reference to these two cases, Mr. Gambier Bolton writes : “My many photographic friends will, I feel sure, forgive a little ‘trumpet-blowing’ on such a memorable occasion as this. To have successfully carried through two important copyright actions within three days, to have obtained such a clear and forcible judgment as that delivered by Mr. Justice Grantham, to have taught the leaders of the new illustrated journalism such a sharp lesson, and thus to have strengthened the hands of the Copyright Union (to whose solicitors all credit is due for the result of my action against *Lloyd's Weekly*) is a state of affairs not likely to happen again in the lifetime of the average man; and, although naturally anxious as to the result at times, through all the incidental worries I have been sustained by the thought that my cause was a just one, and that, although there had recently been verdicts as to the reading and meaning of the Copyright Act, which had caused great uneasiness to photographers in this country, yet, if I could but get a hearing before a Judge who would listen to my explanations of the difficulties of our work, the right that we claim to be treated exactly on the same footing as the artist, and that the piratical, parasitical, ‘*mechanic* in art’ who stole the result of our labours was as guilty of crime as he who steals my watch or purse, then all anxiety as to the result of these actions would be at an end. And this has taken place exactly as I foretold; our negatives are admitted to be ‘*a valuable property*’; in future we can claim to be judged as artists—for, after all, it is not the paint brush, engraver's or sculptor's tool, or the camera that produces artistic results, but the man using them—and, although photography may never be true art (a fact that a few of us admit), yet our position from to-day is improved, we move up a step or two, and, although we may have discarded soft

hats of the brigand type, red neckties, and 'low-watermark' collars, we shall none the less be able to carry our heads the higher, and to face the pirate who steals our work with good courage, certain of obtaining justice whilst glorying in his downfall.

"And for what I have been able to do for our art-science to-day I would ask, and I hope not in vain, for three things. First that the name of the Photographers' Copyright Union be altered at once, as I have already given notice, to the Photographic Copyright Union; then that its doors be thrown open to all alike, that the miserable little jealousies which still bolster up the titles 'Commercial' and 'Amateur' photographer be swept away, and that all should stand on exactly the same footing; and, lastly, that photographers in every part of the world where the Act of 1862 is in force should send in their names at once as members of the Union, and so strengthen our hands in our fight against those who steal our works."

